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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,690	09/30/2003	Christoph Rohr	3587-000009	5084
27572	7590	01/04/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 01/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/674,690	ROHR, CHRISTOPH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Louis K. Huynh	3721	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>93003, 21904, 5604</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 12-16: "the filling aids...or...or...these containers" render the claims indefinite because the filling aids is not capable of performing the recited functions alternatively, it can only perform one specific function and not the others; for example, the filling aids that is designed and configured to deform the containers does not enlarge the filling opening or forming filling guides for the containers, etc.

Claim 3, lines 2-4: "deforming means...pressing or spreading action" renders the claim indefinite because the deforming means is not capable of performing the pressing and the spreading action alternatively.

Claim 11, line 2-3: "in particular" render the claim indefinite for it is unclear whether or not limitation following the phrase is actually a part of the claimed invention.

Claim 12, lines 9-14: "wherein...or...or...these containers" renders the claim indefinite because the steps of deforming the containers, providing filling aids that enlarging the filling opening and providing filling aids that form filling guides are not provided alternatively, each of the recited step can only be performed alone in the claimed method of filling containers without and/or in combination with the others.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 9, 10, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (US 3,431,703).

With respect to Claim 1, Miller discloses an apparatus for filling containers including: a container conveyor (20) for conveying containers (10) to a filling station (11), an articles conveyor (suitable hopper or tank) for conveying measured articles (such as strawberries), a filling nozzle (12), and filling aids (29) that deforms the container (10) at the filling station (11).

With respect to Claim 2, the filling aids (29) comprise two shells (34 & 35) that act in pair in respect to a symmetrical axis of the container (10).

With respect to Claim 3, the filling aids (29) deform the containers (10) by spreading (col. 2, lines 48-52).

With respect to Claim 4, the filling aids (29) comprise shell halves (34) having curved deforming surfaces (Fig. 4).

With respect to Claim 5, the container conveyor (20) has carry-along elements (24a) for accommodating and carrying along the containers that are designed as part of the filling aids because they help keeping the container in position for the deformation of the containers during the filling process.

With respect to Claim 9, the filling aids (29) include two shell halves (34 & 35) that cover two sides of the containers and form filling guides.

With respect to Claim 10, the filling aids (29) have shell halves (34) that spread one side of the container to enlarge a filling opening of the container (Fig. 5).

With respect to Claim 12, Miller discloses method for filling containers including the steps of: conveying containers (10) to a filling station (11), conveying articles (such as strawberries) to the filling station (11), deforming the containers (10) using filling aids (29), and filling the containers using a filling nozzle (12).

With respect to Claim 13, the filling spaces of the containers (10) are more or less elastically deformed (Fig. 2).

5. Claims 1-3, 5 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramaker (US 5,027,586).

With respect to Claims 1 and 11, Ramaker discloses an apparatus for filling containers including: a container conveyor (11) for conveying containers (7) to a filling station (13), an articles conveyor (20) for conveying articles (17), a filling mechanism (18) including pusher bars (117) which are considered to be equivalent to the claimed picker, and filling aids (93) that deforms the container (from blanks 5 into containers 7).

With respect to Claim 2 and 5, the filling aids (93) comprise flight bars (93a & 93b) that act in pair in respect to a symmetrical axis of the container (7) to carry the containers to the filling station (13).

With respect to Claim 3, the filling aids (93) deform the containers (10) by pressing.

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With respect to Claim 12, Ramaker discloses a method for filling containers including the steps of: conveying containers (7) to a filling station (13) on a container conveyor (11), conveying articles (17) to the filling station (13), deforming the containers (10) using filling aids (93), and filling the containers using a filling mechanism (18).

With respect to Claim 13, the filling spaces of the containers (7) are more or less elastically deformed.

With respect to Claim 14, the containers (7) are conveyed to the filling station (13) by carry-along elements (93), wherein the containers are deformed by the carry-along elements (93) from flat blanks (5) into open containers (7), and wherein the containers (7) are loaded onto the container conveyor (11) at a curved portion of the container conveyor (Fig. 1). Although Ramaker does not show where the filled containers are discharged, it is understood that the filled containers are discharged in at a curved portion at the end of the container conveyor after the closing of the flaps.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-8 and 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (US 3,431,703).

With respect to Claim 6, the apparatus of Miller meets all of applicant's claimed subject matter but lacks the specific teaching of at least some of the carry-along element having a side

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wall that has a convex design for abutting against a wall of the container. Although Miller does not expressly disclose how the containers are transferred to the container conveyor (20), it is understood that the containers (10) are transferred to the conveyor (20) sideways (from a container former for example) and placed between the carry-along elements (24a). Therefore, it would have been obvious to an ordinary skilled person in the art, at the time of the invention, to have provided the carry-along elements (24a) of the Miller's apparatus with a side wall having a convex design that would offer a wider entrance and enable the container to be accepted easily.

With respect to Claim 7, the containers (10) are clamped between the carry-along elements (24a) for the purpose of deforming the container.

With respect to Claim 8, the modified filling apparatus of Miller meets all of applicant's claimed subject matter but lacks the specific teaching of the container being transferred to the container conveyor at a curved region of the conveyor. However, it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have transferred the containers (10) to the container conveyor (20) at the curved region of the container conveyor (20) because the carry-along elements (24a) are positioned at an angle with respect to each other at the curved region that would widen the distance between the carry-along elements and enable the containers to be accepted easily.

With respect to Claim 15, the method of Miller meets all of applicant's claimed subject matter but lacks the specific teaching of the containers being partially filled prior to arriving to the filling station. However, filling partially filled containers is well known in the art of packaging; therefore, it would have been obvious to an ordinary skilled person in the art, at the time the invention was made, to have modified the method of Miller by having partially filled the

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containers with either the juice or the strawberries at one filling station and having filled the other at another filling station since the juice and/or the strawberries can be processed separately or together.

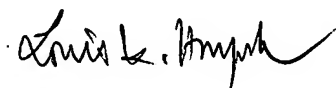
***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied prior art.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (571) 272-4462. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Louis K. Huynh  
PRIMARY EXAMINER  
Art Unit 3721

December 27, 2004